



U.S. Department of Justice

United States Attorney  
Eastern District of New York

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610 Federal Plaza, 5<sup>th</sup> Floor  
Central Islip, N.Y. 11722

October 1, 2013

**VIA ECF**

Honorable Joanna Seybert  
United States District Judge  
United States District Court  
100 Federal Plaza  
Central Islip, NY 11722-9014

Re: Nicosia v. United States of America  
No. 11-CV-5069 (Seybert, J.) (Brown, M.J.)

Dear Judge Seybert:

The undersigned represents defendant, the United States of America ("Defendant"), in the above-referenced matter. On May 9, 2013, plaintiff's counsel notified the Court and the undersigned that plaintiff Marianne Nicosia had passed away on January 3, 2013. See Docket Entry 22. Counsel stated that he would forward a copy of the Death Certificate upon his receipt of same and that plaintiff's daughter was meeting with counsel on May 22, 2013 to proceed with a Petition for Letters Testamentary. See id.

To date – close to five months after counsel notified the Court of plaintiff's passing and close to nine months since plaintiff actually passed away – counsel has not filed a motion for substitution of a proper party. Because no timely motion for substitution of a proper party has been filed, Defendant respectfully requests that this action be dismissed, with prejudice, pursuant to Fed. R. Civ. P. 25(a)(1) ("If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent *must* be dismissed." (Emphasis added)).

We thank the Court for its attention to this matter.

Respectfully submitted,

LORETTA E. LYNCH  
United States Attorney

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